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**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL MOORMAN,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A02-0705-CR-409

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Heather Welch, Judge
Cause No. 49F09-0701-FD-505

November 9, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Michael Moorman appeals from his convictions for Class D felony Theft¹ and Class B misdemeanor Criminal Mischief.² We affirm.

FACTS

On January 2, 2007, Abraham Qualid noticed Michael Moorman in line at the Marathon Station he managed at 34th and Sherman in Indianapolis. At some point, Moorman, who looked “very nervous” and whose “big” coat pockets appeared to be full, left the line, opened the door, and ran. Tr. p. 7, 8. Qualid followed and told Moorman to “just give [the] stuff back[,]” but Moorman crossed the street and ran behind a house. Tr. p. 9. Soon after, as Qualid rode in the back of Indianapolis Metropolitan Police Officer Charles Pearsey’s car, he saw Moorman walking in an alley. When Officer Pearsey told Moorman to “come here[,]” he ran off again. Tr. p. 37.

Eventually, Moorman was apprehended at a nearby house. A box of “Fast Break” candy bars was found in one of the home’s window wells, the door of the home had been kicked in, and a muddy footprint was on the door. Moorman’s shoe was compared to the footprint on the door and found to be an “exact match[.]” Tr. p. 46. Qualid noticed later that a box of Fast Break candy bars was missing from the Marathon’s candy aisle.

The State charged Moorman with Class D felony theft, Class A misdemeanor battery, Class A misdemeanor resisting law enforcement, Class A misdemeanor criminal trespass, Class B misdemeanor criminal mischief, and Class D felony residential entry. The trial court found Moorman guilty of theft and criminal mischief and sentenced him to

¹ Ind. Code § 35-43-4-2 (2006).

² Ind. Code § 35-43-1-2(a) (2006).

560 days of incarceration for theft, 154 days for criminal mischief, with both sentences to be served concurrently.

DISCUSSION AND DECISION

Standard of Review for Issues I and II

Moorman contends that the State produced insufficient evidence to sustain his convictions. Our standard of review for challenges to the sufficiency of the evidence supporting a criminal conviction is well-settled:

In reviewing a sufficiency of the evidence claim, the Court neither reweighs the evidence nor assesses the credibility of the witnesses. We look to the evidence most favorable to the verdict and reasonable inferences drawn therefrom. We will affirm the conviction if there is probative evidence from which a reasonable jury could have found Defendant guilty beyond a reasonable doubt.

Vitek v. State, 750 N.E.2d 346, 352 (Ind. 2001) (citations omitted).

I. Theft

Moorman contends that the State failed to produce sufficient evidence to establish that he exerted unauthorized control over the box of Fast Break candy bars stolen from the Marathon station. Indiana Code section 35-43-4-2 provides, in relevant part, that “[a] person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class D felony.”

Moorman’s argument is essentially that his theft conviction cannot stand because no eyewitness saw him with the Fast Break bars. As the State points out, however, “[a] theft conviction may be sustained by circumstantial evidence.” *J.B. v. State*, 748 N.E.2d

914, 916 (Ind. Ct. App. 2001). Here, Qualid noticed a nervous Moorman in his store, his large pockets full, who ran off and refused to stop when hailed. Soon after, Moorman ran off again when spotted by Qualid and Officer Pearsey. The trial court was entitled to conclude that Moorman's evasive behavior tended to show his guilt. *See Dill v. State*, 741 N.E.2d 1230, 1232 (Ind. 2001) ("Flight and related conduct may be considered by a jury in determining a defendant's guilt."). Moorman was finally apprehended at a house where a box of Fast Break candy bars, the same bars as those missing from the Marathon were also found. This evidence leads to the reasonable conclusion that Moorman had taken the candy from the Marathon station to the house and placed it in the window well. The State produced sufficient evidence to sustain Moorman's theft conviction.

II. Criminal Mischief

Moorman contends that the State failed to establish that he damaged the door of the house at which he was found. Indiana Code section 35-43-1-2 provides, in relevant part, that

A person who:

- (1) recklessly, knowingly, or intentionally damages or defaces property of another person without the other person's consent; or
 - (2) knowingly or intentionally causes another to suffer pecuniary loss by deception or by an expression of intention to injure another person or to damage the property or to impair the rights of another person;
- commits criminal mischief, a Class B misdemeanor.

Moorman's argument is, again, essentially that his criminal mischief conviction cannot stand because no eyewitness saw him kick the door. It is well-settled, however, that "[c]ircumstantial evidence will be deemed sufficient if inferences may reasonably be drawn that enable the trier of fact to find the defendant guilty beyond a reasonable

doubt.” *Davenport v. State*, 749 N.E.2d 1144, 1152 (Ind. 2001). Moorman was found in close proximity to a kicked-in door that bore a muddy footprint matching exactly the shoes he was wearing. Given this evidence, a reasonable conclusion was that Moorman had kicked in the door. The State produced sufficient evidence to sustain Moorman’s criminal mischief conviction.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.